IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2202 OF 2005

Shri Kirtikumar J. Vora. . .. Petitioner.

vs.

Shri Jayantilal N. Soni. .. Respondents.

Mr. S.A. Rajeshirke for petitioner.

CORAM : S.U. KAMDAR, J.

DATE : 28th November, 2005.

P.C.:

. In the present petition notice was already issued by this Court by an order dated 24.6.2005 inter alia providing that the petition itself will be finally heard. The notice is duly served. There is an endorsement of the office that the notice is duly served and despite of the service of notice, none appears for the respondent. In that view of the matter, the petition is being finally disposed of.

2. The present petition is challenging the order passed by the IInd Joint Civil Judge, Junior Division, Prune dated 7.2.2005. By the said order

the Court below has granted the application for amendment of written statement and directed the respondent to pay cost quantified at Rs. 1500/-. The only point on which the said order is challenged is that there was an earlier application for amendment of the written statement dated 27.7.2003 seeking to incorporate the very same amendment being Exhibit-24 and the same was rejected by an order dated 9.10.2003. The respondent-original defendant thereafter took out a second application being Exhibit - 57 sometime on or about 17.1.2005 seeking to amend the written statement by incorporating the very same amendment which has already been rejected and that order having not been challenged further, has achieved finality.

3. I have perused both exhibits, being Exhibit 24 and Exhibit 57. After perusing the same, I am of the opinion that the amendment which is now sought to be introduced is by way of adding of two paras i.e. para. 5A and 5AA. The averments made in para 5AA are identical to the averments which were sought to be introduced by Exhibit-24 by way of adding para 7A. The said application having been rejected on 9.10.2003 the trial Court ought not to have granted amendment in so far as the para. 5AA is concerned. In so far as para 5A of Exhibit 57 is concerned, I am of the opinion that amendment can be permitted. Accordingly I allow the said amendment in view of

the fact that these are not the amendments which were sought to be introduced by earlier application Exhibit 24. The averments which are set out therein are necessary for the purpose of trial of the suit. The only ground on which the amendment in para. 5A is challenged is on the ground of delay. In my opinion, the trial Court has awarded already a cost of Rs. 1500/- and permitted the amendment to be carried out within three days after payment of the cost. In that view of the matter, the impugned order of the trial Court is modified and the respondents are permitted to carry out the amendment as prayed for in Exhibit 57 only in so far as para 5A is concerned, the amendment sought to be inserted by para 5AA is concerned is not allowed and the same is rejected. Thud, the order of the trial Court is substituted by the following order.

> That Exhibit 57 is partly allowed. The amendment in terms of para 5A is permitted.

4. The petition is made absolute accordingly. The trial Court is directed to permit the amendment in terms of para 5A only. No order as to costs.